**ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.**
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*Proposed Attorneys for the Debtor and Debtor in Possession*

**Hearing Date and Time:**
**March 1, 2017 at 10:00 a.m.**

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**
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In re: Chapter 11

**FIA 164 HOLDINGS LLC,** Case No: 16-20006-rdd

Debtor.
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**DEBTOR'S MOTION FOR ENTRY OF ORDER EXTENDING EXCLUSIVE RIGHT TO FILE A PLAN OF REORGANIZATION AND TO SOLICIT ACCEPTANCES WITH RESPECT THERETO AND FOR RELATED RELIEF**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

The debtor and debtor in possession, FIA 164 Holdings LLC(the "Debtor"), by its proposed attorneys, seeks the entry of an order, a proposed form of which is annexed to this application as **Exhibit A**, pursuant to Section 1121 of Title 11 of the United States Code (the "Bankruptcy Code") extending the time within which the Debtor has the exclusive right to file a plan of reorganization and to solicit acceptances with respect thereto for 120 days through and including June 12, 2017 and August 9, 2017, respectively. In support thereof, the Debtor states:

## JURISDICTION AND VENUE

1. Jurisdiction over this application is vested in the United States District Court for this District pursuant to 28 U.S.C. § 1334.

2. This motion has been referred to this Court for consideration pursuant to Section 157 of the Judicial Code and the *Standing Order of Reference Regarding Title 11* (S.D.N.Y. Feb 1, 2012) (Preska, C.J.).

3. This is a core proceeding arising under title 11 of the United States Code. See 28 U.S.C. § 157(b)(1). The statutory predicate for the relief sought is Section 1121 of the Bankruptcy Code.

4. Venue of this civil proceeding in this district is proper pursuant to 28 U.S.C § 1409.

**BACKGROUND**

5. The Debtor owns shares in 440 West 164th Street Housing Development Fund Company ("440 West 164th"), which is a housing cooperative that owns the building located at 440 West 164th Street, New York, New York (the "Property"). 440 West 164th is also currently a chapter 11 debtor. Along with the ownership of shares in 440 West 164th, the Debtor is also the holder of proprietary leases for certain apartments in the Property.

6. On October 13, 2016 (the "Petition Date"), the Debtor filed an emergency petition for relief under Chapter 11 of the Bankruptcy Code.

7. The Debtor filed its schedules and statement of financial affairs on November 10, 2016. No committee, trustee or examiner has been appointed in the Debtor's case.

8. On November 4, 2016, the City of New York (the "City") filed a motion for relief from stay on the basis that the stay did not apply to the transfer of deed with respect to the Property because the Property was not owned by the Debtor. An order determining that the stay did not apply to the Property was entered over the Debtor's objection on December 19, 2016.

## RELIEF REQUESTED

9. Pursuant to section 1121(b) of the Bankruptcy Code, the Debtor has the exclusive right to file a plan of reorganization during the first 120 days following the Petition Date (the "Exclusivity Period"). In addition, pursuant to Section 1121(c)(3) of the Bankruptcy Code, the Debtor is given the exclusive right to solicit acceptances to any plan filed during the Exclusivity Period for one hundred eighty (180) days following the Petition Date (the "Acceptance Period," together with the Exclusivity Period, the "Exclusive Periods"). Pursuant to Section 1121(d) of the Bankruptcy Code, this Court may extend the Exclusive Periods.

10. The current Exclusivity Period and Acceptance Period expire on February 10, 2017 and April 11, 2017, respectively. The filing of a motion pursuant to Section 1121(d) prior to the expiration of the Exclusive Periods tolls the deadline pending resolution of such motion. See 11 U.S.C. § 1121(d)(1) ("[s]ubject to paragraph (2) on request of a party in interest made *within* the respective periods specified in subsections (b) and (c) of this section . . . the court may for cause reduce or increase the 120 day period or the 180 day period referred to in this section.") (emphasis added).

11. This is the Debtor's first request for an extension of the Exclusive Periods. The Debtor seeks the entry of an order: (i) extending the Exclusivity Period for 120 days to and including June 12, 2017, and (ii) extending the Acceptance Period for 120 days to and including August 9, 2017; to ensure that this Court, the Debtor and other parties in interest are not distracted by the filing of any competing or premature plans.

12. The Debtor submits it should be granted the requested extensions of the Exclusive Periods so that it will have sufficient time to formulate and then confirm the Plan.

**CAUSE EXISTS FOR AN EXTENSION OF THE EXCLUSIVE PERIODS**

13. The Debtor's Exclusive Periods may be extended by this Court for "cause" pursuant to Section 1121(d) of the Bankruptcy Code.

14. The moving party bears the burden of establishing that cause exists for an extension of exclusivity under Section 1121(d) of the Bankruptcy Code. In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y., 1987). Whether cause exists to extend a debtor's exclusive period is a decision committed to the sound discretion of the bankruptcy court based upon the facts and circumstances of each particular case. See, e.g., In re Adelphia Commc'ns Corp., 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006), First American Bank of New York v. Southwest Gloves and Safety Equipment, Inc., 64 B.R. 963, 965 (D. Del. 1986); Texaco, 76 B.R. at 325; In re Reetz, 61 B.R. 412, 414 (Bankr. W.D. Wis. 1987); In re Tony Downs Foods Co., 34 B.R. 405, 407 (Bankr. D. Minn. 1983). Bankruptcy courts exercise broad flexibility in making such determinations. *See*, H.R. Rep. No. 595, 95th Cong., 2d Sess. 232 (1978); See also In re Perkins, 71 B.R. 294 (W.D. Tenn. 1987) ("The hallmark of [Section 1121(d)] is flexibility").

15. Bankruptcy courts generally focus on nine factors to determine whether a motion to extend exclusivity pursuant to 11 U.S.C. § 1121(d) should be granted:

(a) the size and complexity of the case;
(b) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
(c) the existence of good faith progress toward reorganization;
(d) the fact that the debtor is paying its bills as they become due;
(e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
(f) whether the debtor has made progress in negotiations with its creditors;
(g) the amount of time which has elapsed in the case;
(h) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
(i) whether an unresolved contingency exists.

In re Adelphia 352 B.R. at 857.

16. This Court should be cognizant that this is the Debtor's first request for an extension of its Exclusive Periods. The Debtor submits that factors "(h)" and "(i)" are inapplicable to the instant case as they are not using exclusivity to pressure creditors and there are no unresolved contingencies that the Debtor is aware of at this time. The Debtor submits that they satisfy factors "(a)" through "(g)" which militate towards granting the relief requested.

17. The Debtor's emergency filing was precipitated by the foreclosure of the Property and the transfer of the deed to the Property by the City that would adversely affect the Debtor's shares in 440 West 164th and the propriety leases with the Property. In order to preserve the value of its shares and proprietary leases, the Debtor filed its own chapter 11 chase.

18. While the City already transferred the deed on October 14, 2016, one day after the Debtor's filing, to a third-party, it was the Debtor's position that such a transfer was void and should be stayed because of the Debtor's own chapter 11 filing on October 13 and that its property rights would be adversely affected by the transfer of the Property to a third-party. However, the City filed a motion for relief from stay on the basis that any actions taken against the Property were not stayed by the Debtor's bankruptcy and the City's motion was granted by this Court.

19. This case is still, however, dependent on a determination by the New York Supreme Court on whether the transfer of the deed by the City was valid. 440 West 164th previously filed an order to show cause in the Supreme Court for the State of New York to unwind the transfer of the deed by the City, which was set for hearing on February 6, 2017. A hearing was held on February 6, however, no decision was rendered and the hearing was further

adjourned to April 3, 2017. The Debtor's ability to formulate a plan of reorganization remains dependent on the Supreme Court's decision, so until then, the Debtor's case is at a standstill. Accordingly, the Debtor seeks to preserve its exclusivity in the event that the Supreme Court decides in 440 West 164th's favor and thus preserving the Debtor's interest in the Property.

20. The Debtor submits that in light of the instant facts and circumstances and in order to preserve the Debtor's ability to formulate a plan of reorganization, that good cause exists to extend the Exclusive Periods. The Debtor believes that the requested extensions will promote the orderly reorganization of the Debtor without the need to devote unnecessary time, money and energy to defending against or responding to a competing plan.

21. The Debtor has served this application on the Office of the United States Trustee, the holders of twenty largest unsecured claims, and all parties who have filed notices of appearance in this case. The Debtor submits that such service be deemed appropriate and sufficient under the circumstances.

22. No prior application for the relief sought has been made by the Debtor to this or any other court.

**WHEREFORE**, the Debtor respectfully requests that this Court grant the relief sought in this motion and enter an order pursuant to Sections 1121(b), (c)(3) and (d) of the Bankruptcy Code: (i) extending the Debtor's exclusive right to file a plan of reorganization to and including **June 12, 2017;** (ii) and in the event that the Debtor files a plan of reorganization prior to **June 12, 2017,** further extending the Debtor's right to solicit acceptances with respect thereto to and including **August 9, 2017**; and (iii) granting to the Debtor such other and further relief as may be just and appropriate.

**Dated:** New York, New York
February 10, 2017

**ROBINSON BROG LEINWAND
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By: __/s/ A. Mitchell Greene
A. **Mitchell Greene**

# **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**
**-------------------------------------------------------**X

In re: Chapter 11

**FIA 164 HOLDINGS LLC,** Case No: 16-20006-rdd

Debtor.
-------------------------------------------------------X

**ORDER FURTHER EXTENDING EXCLUSIVE RIGHT TO FILE A PLAN OF REORGANIZATION AND TO SOLICIT ACCEPTANCES WITH RESPECT THERETO AND FOR RELATED RELIEF**

**UPON** the motion dated February 10, 2017 (the "Motion") of **FIA 164 Holdings LLC** (the "Debtor") seeking the entry of an order pursuant to section 1121 of Title 11 of the United States Code (the "Bankruptcy Code"): (i) extending the Debtor's exclusive right to file a plan of reorganization through and including **June 12, 2017;** and (ii) in the event that the Debtor files a plan of reorganization on or prior to that date, extending the Debtor's right to solicit acceptances with respect thereto through and including **August 9, 2017**; and there being due and sufficient notice of the Motion; and a hearing having been held on March 1, 2017; and it appearing that due and sufficient cause appearing therefor, it is

**ORDERED,** that the Motion is granted as set forth herein; and it is further

**ORDERED**, that the Debtor's exclusive right to file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code is extended through and including **June 12, 2017** (the "Exclusivity Period"); and it is further

**ORDERED**, that in the event that the Debtor files a plan of reorganization within the time set forth in the preceding paragraph, then the Debtor's exclusive right to solicit acceptances with respect thereto pursuant to §1121(c)(3) of the Bankruptcy Code is extended to **August 9, 2017** (the "Acceptance Period"); and it is further

**ORDERED**, that the entry of this order is without prejudice to the Debtor's right to seek additional extensions of the Exclusivity Period and Acceptance Period pursuant to §1121 of the Bankruptcy Code.

**DATED:** White Plains, New York
__________________, 2017

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**HONORABLE ROBERT D. DRAIN**
**UNITED STATES BANKRUPTCY JUDGE**